

MARK STEGER SMITH  
Assistant U.S. Attorney  
U.S. Attorney's Office  
2601 Second Avenue North  
Suite 3200  
Billings, MT 59101  
Ph: (406) 247-4667  
Fax: (406) 657-6058  
mark.smith3@usdoj.gov

TODD KIM  
Assistant Attorney General  
Environment and Natural Resources Division  
United States Department of Justice

ARWYN CARROLL (MA Bar 675926)  
LUTHER L. HAJEK (CO Bar 44303)  
Natural Resources Section  
P.O. Box 7611  
Washington, D.C. 20044-7611  
Ph: (202) 305-0465  
Fax: (202) 305-0506  
arwyn.carroll@usdoj.gov  
luke.hajek@usdoj.gov

*Counsel for Federal Defendant*

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
GREAT FALLS DIVISION**

WESTERN ORGANIZATION OF )  
RESOURCE COUNCILS, *et al.*, )

Plaintiffs, )

v. )

U.S. BUREAU OF LAND )  
MANAGEMENT, )

Defendant, and )

STATE OF WYOMING, )

Intervenor Defendant. )

Case No. 4:20-cv-00076-BMM-JTJ

**FEDERAL DEFENDANT'S  
CROSS-MOTION FOR SUMMARY  
JUDGMENT**

In 2018, this Court concluded that Resource Management Plans and Environmental Impact Statements prepared by the United States Bureau of Land Management's Field Offices in Miles City, Montana, and Buffalo, Wyoming, failed to satisfy certain requirements of the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*, and ordered the United States Bureau of Land Management (BLM) to consider certain alternatives to and impacts of development in the Powder River Basin. BLM undertook those analyses and, in 2019, approved Resource Management Plan Amendments (ARMPA) and Supplemental Environmental Impact Statements (SEIS) prepared by the Miles City and Buffalo Field Offices. Plaintiffs now challenge BLM's decisions approving the ARMPAs under the APA.

Summary judgment is the appropriate vehicle for review of agency administrative decisions under the limitations imposed by the APA. *See, e.g., Nw. Motorcycle Ass'n. v. U.S. Dep't of Agric.*, 18 F.3d 1468, 1471–72 (9th Cir. 1994) (discussing the standards of review under both the APA and Fed. R. Civ. P. 56). Pursuant to Rule 56, “[t]he moving party is entitled to summary judgment as a matter of law where, viewing the evidence and the inferences arising therefrom in favor of the nonmovant, there are no genuine issues of material fact in dispute.” *Id.* at 1472. Because the role of the Court under the APA is not to “find facts” but is limited to reviewing the Administrative Record to determine whether the federal

agencies considered the relevant factors and reached conclusions that were not arbitrary and capricious, there can be no genuine issue of material fact, and summary judgment is the appropriate resolution of this case.

For the reasons set forth in the accompany memorandum, BLM's ARMPAs and SEISs challenged in this action comply with both the Court's order and NEPA. Federal Defendant therefore requests that summary judgment be entered in its favor and that this action be dismissed with prejudice.

Respectfully submitted this 7th day of January, 2022.

TODD KIM  
Assistant Attorney General  
Environment & Natural Resources Division

/s/ Arwyn Carroll  
ARWYN CARROLL (MA Bar 675926)  
Trial Attorney, Natural Resources Section  
United States Department of Justice  
Environment and Natural Resources Div.  
P.O. Box 7611  
Washington, D.C. 20044-7611  
Phone: 202-305-0465  
Fax: 202-305-0506  
arwyn.carroll@usdoj.gov

LUTHER L. HAJEK (CO Bar 44303)  
Trial Attorney, Natural Resources Section  
United States Department of Justice  
Environment and Natural Resources Div.  
999 18th St., South Terrace, Suite 370  
Denver, CO 80202  
Phone: (303) 844-1376

Fax: (303) 844-1350  
luke.hajek@usdoj.gov

LEIF M. JOHNSON  
Acting United States Attorney

MARK STEGER SMITH  
Assistant U.S. Attorney  
U.S. Attorney's Office  
2601 Second Avenue North, Suite 3200  
Billings, MT 59101  
Phone: (406) 247-4667  
Fax: (406) 657-6058  
mark.smith3@usdoj.gov

*Counsel for Federal Defendant*